

*Aslan*



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Monarch Enterprises, Inc.  
**File:** B-233724  
**Date:** March 16, 1989

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### DIGEST

Contracting agency improperly made award on the basis of initial proposals, without discussions, where the record does not clearly show that the contract awarded will result in the lowest overall cost to the government.

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### DECISION

Monarch Enterprises, Inc., protests the award of a contract to Edwin Lewis, under request for proposals (RFP) No. 20-00-9-032, issued by the Farmers Home Administration (FmHA) for interest credit renewal services. Monarch alleges that the agency improperly awarded the contract on the basis of Lewis' higher-priced proposal.

We sustain the protest.

The RFP sought proposals for a contract, with a base period of 1 year plus 1 option year, to interview and verify the income of borrowers on loans serviced by FmHA, and then to prepare the forms used by FmHA to calculate the borrower's monthly payments for the coming year. The solicitation requested offerors to include in their proposals a description of their prior experience, the names, addresses and telephone numbers of previous employers, and letters of reference from clients for which similar work had been undertaken within the past 2 years. Award was to be made to the responsible offeror whose proposal was most advantageous to the government, cost and other specified factors considered, with the following technical evaluation factors specified: qualifications/prior experience (35 points); available resources/facilities (35 points); references from clients for whom similar work had been performed (25 points); and past performance in providing interest

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credit renewal services to FmHA (5 points). The solicitation stated that although the agency might award to other than the low, technically acceptable offeror, price would be an important evaluation factor.

Eight proposals were received in response to the solicitation. Although Lewis offered only the third lowest price, \$69,080 (\$22 per completed application package), he received the highest technical score (79 points). The agency considered it a strength of Lewis' proposal that he had prior experience in providing interest credit renewal services to FmHA, that the proposal addressed in some detail the place where the work would be performed, and that he furnished favorable letters of recommendation, including letters from two FmHA officials attesting to the quality of the interest credit renewal services and other work he had performed for the agency.

Monarch offered the low price, \$56,520 (\$18 per package), but only received the fifth highest technical score (52 points). Although FmHA concluded that Monarch's proposal met qualifications with respect to the evaluation factors for prior experience/qualifications and available resources/facilities, the agency considered the proposal weak in these areas compared to Lewis', and also considered it a relative weakness that the proposal only included references and not letters of recommendation, and that Monarch had not previously performed services for FmHA. The second low price (\$59,660, \$19 per package) was offered by Garland Crump, who also received the second highest technical score (61 points). FmHA apparently considered it a strength of the proposal that Crump had previously provided interest credit renewal services, but the agency considered Crump's furnishing of only one letter of recommendation and his failure to mention the quality and promptness of his prior interest credit renewal work for the FmHA to be the relative weaknesses in his proposal.

Based upon its evaluation of the initial proposals, FmHA determined that award to Lewis would be in the best interests of the government and proceeded with an award to that firm, without conducting discussions, on November 2, 1988.

Although Monarch contends in its protest only that it should have received a higher score and that award to Lewis at a 22 percent higher price has not been adequately justified, we sustain the protest on the separate ground that FmHA improperly made award to Lewis at other than the lowest price without conducting discussions.

Under the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253b(d)(1)(B) (Supp. IV 1986), in negotiated procurements, agencies may award a contract on the basis of initial proposals, without discussions, only:

"when it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of an initial proposal without discussions would result in the lowest overall cost to the Government."

We have held that by its express use of the term "lowest overall cost," CICA limits the contracting officer's discretion by prohibiting acceptance of an initial proposal where there is at least one other lower cost proposal in the competitive range. United Telecontrol Electronics, Inc., B-230246, B-230246.2, June 21, 1988, 88-1 CPD ¶ 590. Under this standard, FmHA could not make award to other than the low offeror without first conducting negotiations and accepting revised proposals from all offerors in the competitive range.

The record indicates that while Lewis' proposal clearly was deemed technically superior to Monarch's proposal, Monarch was not determined to be technically unacceptable, and we find no evidence that Monarch nevertheless was considered unacceptable, warranting its exclusion from the competitive range. In this regard, under the two most important factors of qualifications/prior experience and resources/facilities, FmHA specifically concluded that Monarch "meets qualifications"; Monarch lost points under the references factor merely for supplying names rather than letters of reference (a potentially easily correctable omission); and the prior FmHA experience factor (under which Monarch received no points) comprised only 5 percent of the evaluation. At the same time, Monarch was the low offeror (22 percent below Lewis' price), a significant fact given that, since the RFP did not indicate otherwise, cost had the same weight in the evaluation as the technical factors combined, Actus Corp./Michael O. Hubbard and L.S.C. Assocs., B-225455, Feb. 24, 1987, 87-1 CPD ¶ 209, and the additional fact that cost must be considered in determining the competitive range. Federal Acquisition Regulation § 15.609.

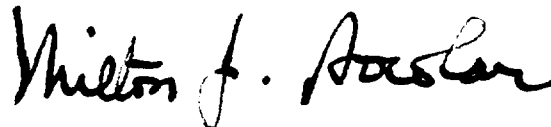
Of course, the mere fact that a proposal has not been rejected as technically unacceptable does not automatically lead to the conclusion that the proposal was in the competitive range; an otherwise acceptable proposal properly may be considered to be outside the competitive range for negotiation purposes where, compared to other proposals, it

clearly does not have a reasonable chance of being selected for award. Vista Videocassette Services, Inc., B-230699, July 15, 1988, 88-1 CPD ¶ 55. However, the record does not show that FmHA made such a determination here, and we find no basis for such a conclusion. Monarch, if given an opportunity to submit a revised proposal, conceivably could have increased its score by 14 points under resources/facilities (by specifying its office space rather than indicating that space would be acquired), and by 15 points under references (by submitting letters of reference), raising its score above Lewis'. Given Monarch's substantially lower price, and the equal cost/technical weighting, we will not speculate that Monarch was considered not to have a reasonable chance of receiving the award.<sup>1/</sup>

We thus sustain the protest on the ground that FmHA improperly made award on the basis of initial proposals, without discussions, to an offeror that did not represent the lowest overall cost to the government, even though there was at least one other lower cost offeror in the competitive range.

By letter of today to the Secretary of Agriculture, we are recommending that the competition be reopened, discussions be held with the offerors in the competitive range, and best and final offers be received. In the event that Lewis is not selected for award under this reopened competition, the contract awarded to Lewis should be terminated for the convenience of the government. In addition, we find that Monarch is entitled to recover its costs of filing and pursuing the protest, including attorneys' fees. See 4 C.F.R. § 21.6(d)(1) (1988); Information Spectrum, Inc., B-233208, Feb. 22, 1989, 89-1 CPD \_\_\_\_\_. Monarch should submit its claim for costs to the agency.

The protest is sustained.

*for*   
Comptroller General  
of the United States

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<sup>1/</sup> Similarly, nothing in the record indicates that Crump would not have had a reasonable chance for award had the FmHA conducted negotiations; Crump's proposed price was approximately 13 percent lower than Lewis', and its proposal received the second highest technical score.